

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

KEVIN RICHARD MAYBERRY,

Petitioner

VS.

WILLIAM TERRY, Warden;

Respondent

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CIVIL ACTION NO. 7:02-CV-107 (HL)

ORDER

Before the Court is petitioner **KEVIN RICHARD MAYBERRY'S** notice of appeal (Tab #24) and application for a certificate of appealability ("COA") (Tab #25) from the Court's September 18, 2006 Order, which adopted the United States Magistrate Judge's Recommendation that the petition for federal habeas relief be denied.

The Eleventh Circuit Court of Appeals has mandated that the Court construe petitioner's notice of appeal as a COA pursuant to 28 U.S.C. § 2253(c). *Edwards v. United States*, 114 F.3d 1083 (11th Cir. 1997). Under § 2253(c), a COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right. For the reasons stated in the United States Magistrate Judge's Recommendation and this Court's Order accepting the same, the Court finds that petitioner has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Accordingly, the application for a COA is **DENIED**.

Also before the Court is petitioner's motion for leave to proceed *in forma pauperis* on appeal (Tab # 26). Said motion is **DENIED AS MOOT**.

SO ORDERED, this 4th day of October, 2006.

s/ **Hugh Lawson**
HUGH LAWSON, JUDGE

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